

CHAPTER 2

REGIONAL WATER, SEWAGE AND SOLID WASTE DISTRICTS

This chapter is designed to summarize certain laws, regulations and uniform compliance guidelines relevant to regional water, sewage and solid waste districts. Please refer to the Indiana Code and other related documents for a complete listing of laws and regulations governing regional water, sewage and solid waste districts. See chapters 10 through 24 of this manual for additional Accounting and Uniform Compliance Guidelines.

ORGANIZATION

IC 13-26-1-1 states: "Any area may be established as a regional water, sewage, or solid waste district under this article for one or more of the following purposes:

- (1) To provide a water supply for domestic, industrial, and public use to users inside and outside the district,
- (2) To provide for the collection, treatment, and disposal of sewage inside and outside the district,
- (3) To provide for the collection, treatment, and disposal of solid waste and refuse inside and outside the district."

IC 13-26-4-1 states: "The board of trustees of a district is the governing body of the district. A board may consist of three, five, seven, nine, eleven or thirteen members." IC 13-26-4-2 to 6 provides for methods of electing and/or appointing the members of the board.

IC 13-26-4-7(a) states: "The board of a district may provide for the payment of not more than \$50 per day for the members of the board for each day or major part of a day devoted to the work of the district." Further, IC 13-26-4-7(b) states: "Members of the board are entitled to receive an amount for travel expenses equal to the amount paid to state employees for expenses incurred in the performance of their duties."

The current mileage rate allowed for state employees is thirty-four cents (34¢) per mile.

DISTRICT POWERS

A district may do the following:

- (1) Sue or be sued.
- (2) Make contracts in the exercise of the rights, powers, and duties conferred upon the district.
- (3) Adopt and alter a seal and use the seal by causing the seal to be impressed, affixed, reproduced, or otherwise used. However, the failure to affix a seal does not affect the validity of an instrument.
- (4) Adopt, amend, and repeal the following:
 - (A) Bylaws for the administration of the district's affairs.

(B) Rules and regulations for the following:

- (i) The control of the administration and operation of the district's service and facilities.
- (ii) The exercise of all of the district's rights of ownership.

(5) Construct, acquire, lease, operate, or manage works and obtain rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a person or an eligible entity.

(6) Assume in whole or in part any liability or obligation of:

- (A) a person;
- (B) a nonprofit water, sewage, or solid waste project system; or
- (C) an eligible entity;

including a pledge of part or all of the net revenues of a works to the debt service on outstanding bonds of an entity in whole or in part in the district and including a right on the part of the district to indemnify and protect a contracting party from loss or liability by reason of the failure of the district to perform an agreement assumed by the district or to act or discharge an obligation.

(7) Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste services by the facilities for the purpose or providing for the following:

- (A) The payment of the expenses of the district,
- (B) The construction, acquisition, improvement, extension, repair, maintenance, and operation of the district's facilities and properties.
- (C) The payment of principal or interest on the district's obligations.
- (D) To fulfill the terms of agreements made with:
 - (i) the purchasers or holders of any obligations; or
 - (ii) a person or an eligible entity.

(8) Except as provided in IC 13-26-5-2.5, require connection to the district's sewer system of property producing sewage or similar waste and require the discontinuance of use of privies, cesspools, septic tanks, and similar structures if:

- (A) there is an available sanitary sewer within three hundred (300) feet of the property line; and
- (B) the district was given written notice by certified mail to the property owner at the address of the property at least ninety (90) days before a date for connection to be stated in the notice.

- (9) Provide by ordinance for reasonable penalties for failure to connect and also apply to the circuit or superior court of the county in which the property is located for an order to force connection, with the cost of the action, including reasonable attorney's fees of the district, to be assessed by the court against the property owner in the action.
- (10) Refuse the services of the district's facilities if the rates or other charges are not paid by the user.
- (11) Control and supervise all property, works, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to the district.
- (12) Construct, acquire by purchase or otherwise, operate, lease, preserve, and maintain works considered necessary to accomplish the purposes of the district's establishment within or outside the district and enter into contracts for the operation of works owned, leased, or held by another entity, whether public or private.
- (13) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell interests in real and personal property or franchises within or outside the district for:
 - (A) the location or protection of works;
 - (B) the relocation of buildings, structures, and improvements situated on land required by the district or for any other necessary purpose; or
 - (C) obtaining or storing material to be used in constructing and maintaining the works.
- (14) Upon consent of two-thirds (2/3) of the members of the board, merge or combine with another district into a single district on terms so that the surviving district:
 - (A) is possessed of all rights, franchises, and authority of the constituent districts; and
 - (B) is subject to all the liabilities, obligations, and duties of each of the constituent districts, with all rights of creditors of the constituent districts being preserved unimpaired.
- (15) Provide by agreement with another eligible entity for the joint construction of works the district is authorized to construct if the construction is for the district's own benefit and that of the other entity. For this purpose the cooperating entities may jointly appropriate land either within or outside their respective borders if all subsequent proceedings, actions, powers, liabilities, rights, and duties are those set forth by statute.
- (16) Enter into contracts with a person, an eligible entity, the state, or the United States to provide services to the contracting party for any of the following:
 - (A) The distribution or purification of water.
 - (B) The collection or treatment of sanitary sewage.
 - (C) The collection, disposal, or recovery of solid waste.
- (17) Make provisions for, contract for, or sell the district's byproducts or waste.
- (18) Exercise the power of eminent domain.

- (19) Remove or change the location of a fence, building, railroad, canal, or other structure or improvement located within or outside the district. If:
 - (A) it is not feasible or economical to move the building, structure, or improvement situated in or upon land acquired; and
 - (B) the cost is determined by the board to be less than that of purchase or condemnation;the district may acquire land and construct, acquire, or install buildings, structures, or improvements similar in purpose to be exchanged for the buildings, structures, or improvements under contracts entered into between the owner and the district.
- (20) Employ consulting engineers, superintendents, managers, and other engineering, construction, and accounting experts, attorneys, bond counsel, employees, and agents that are necessary for the accomplishment of the district's purpose and fix their compensation.
- (21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.
- (22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:
 - (A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or
 - (B) pay adequate compensation for the property.
- (23) Dispose of, by public or private sale or lease, real or personal property determined by the board to be no longer necessary or needed for the operation or purposes of the district. [IC 13-26-5-2]

EXEMPTION FROM REQUIREMENT TO CONNECT TO SEWER SYSTEM

IC 13-26-5-2.5 states:

“(a) As used in this section, 'septic tank soil absorption system' has the meaning set forth in IC 13-11-2-199.5.

(b) Subject to IC 13-26-5-2.5(d) and except as provided in IC 13-26-5-2.5(e), a property owner is exempt from the requirement to connect to a district's sewer system and to discontinue use of a septic tank soil absorption system if the following conditions are met:

- (1) The property owner's septic tank soil absorption system was installed not more than five (5) years before the district's sewer system's anticipated connection date.
- (2) The property owner's septic tank soil absorption system was new at the time of installation and was approved in writing by the local health department.

(3) The property owner, at the property owner's own expense, obtains and provides to the district a certification from the local health department or the department's designee that the septic tank soil absorption system is functioning satisfactorily. If the local health department or the department's designee denies the issuance of a certificate to the property owner, the property owner may appeal the denial to the board of the local health department. The decision of the board is final and binding.

(4) The property owner provides the district with:

(A) the written notification of potential qualification for the exemption described in (g); and

(B) the certification described in subdivision (3); within the time limits set forth in subsection (g).

(c) If a property owner, within the time allowed under IC 13-26-5-2.5(g), notifies a district in writing that the property owner qualifies for the exemption under this section, the district shall, until the property owner's eligibility for an exemption under this section is determined, suspend the requirement that the property owner discontinue use of a septic tank soil absorption system and connect to the district's sewer system.

(d) A property owner who qualifies for the exemption provided under this section may not be required to connect to the district's sewer system for a period of three (3) years beginning on the date the district's sewer system's anticipated connection date. If ownership of the property passes from the owner who qualified for the exemption to another person during the exemption period, the exemption does not apply to the subsequent owner of the property.

(e) The district may require a property owner who qualifies for the exemption under this section to discontinue use of a septic tank soil absorption system and connect to the district's sewer system if the district credits the unamortized portion of the original cost of the property owner's septic tank soil absorption system against the debt service portion of the customer's monthly bill. The amount that the district must credit under this subsection is determined in STEP TWO of the following formula:

STEP ONE: Multiply the original cost of the property owner's septic tank soil absorption system by a fraction, the numerator of which is ninety-six (96) months minus the age in months of the property owner's septic system, and the denominator of which is ninety-six (96) months.

STEP TWO: Determine the lesser of four thousand eight hundred dollars (\$4,800) or the result of STEP ONE.

The district shall apportion the total credit amount as determined in STEP TWO against the debt service portion of the property owner's monthly bill over a period to be determined by the district, but not to exceed twenty (20) years, or two hundred forty (240) months.

(f) A district that has filed plans with the Indiana Department of Environmental Management to create or expand a sewage district shall, within ten (10) days after filing the plans, provide written notice to affected property owners:

(1) that the property owner may be required to discontinue the use of a septic tank soil absorption system;

(2) that the property owner may qualify for an exemption from the requirement to discontinue the use of the septic tank soil absorption system; and

(3) of the procedures to claim an exemption.

- (g) To qualify for an exemption under this section, a property owner must:
- (1) within sixty (60) days after the date of the written notice given to the property owner under IC 13-26-5-2.5, notify the district in writing that the property owner qualifies for the exemption under this section; and
 - (2) within sixty (60) days after the district receives the written notice provided under subdivision (1), provide the district with the certification required under IC 13-26-5-2.5(b)(g)."

RULES AND ORDINANCES

The board may by rules and resolutions provide the following:

- (1) The procedure for the board's actions.
- (2) The manner of selection of the board's president, treasurer, and secretary and other officers or employees of the district, including the titles, terms of office, compensation, duties, number, and qualifications.
- (3) Any other lawful subject necessary to the operation of the district and the exercise of the power granted.

The board must adopt an ordinance by a majority vote to take action of a legislative nature. Proposed ordinances may be read by title only unless a trustee requests a reading in full.

A majority of the board or the officers of the board or employees of the district that are authorized by the board may take action of an administrative or executive nature. [IC 13-26-5-3]

ADOPTION AND ENFORCEMENT OF RULES

The Board may adopt and enforce rules for the following purposes:

- (1) To accomplish the purpose of a district.
- (2) To protect the works, improvements, and properties, both real and personal, that the district owns.
- (3) To secure the best results from the construction, operation, and maintenance of works, improvements, and properties.
- (4) To prevent damage by the misuse of the works, improvements, or properties by:
 - (A) the pollution or misuse of the waters in the district or of the sewerage system; or
 - (B) the improper disposal of solid waste.

The board may adopt and enforce rules under IC 13-26-5-4(a) that are necessary and advisable to do the following:

- (1) Protect and preserve the works, improvements, and properties owned or controlled by the district, prescribe the manner of use by any person, and preserve order in and adjacent to the works.

(2) Prescribe the manner:

(A) in which ditches, sewers, pipelines, or other works should be adjusted to or connected with the works of the district; and

(B) of waste disposal in the district.

(3) Prescribe the permissible uses of the water supply and the manner of distribution and prevent the pollution or unnecessary waste of the water supply.

(4) Prohibit or regulate the discharge into the sewers of the district of liquid or solid waste detrimental to the works and improvements.

Rules must be:

(1) consistent with:

(A) statutes; and

(B) the rules of the solid waste management board or the water pollution control board; and

(2) maintained and open to inspection in the office of the district.

The board may enforce by injunction or other legal remedy rules that are adopted. The board may remove a harmful or improper construction or obstruction or may close an opening or connection made improperly or in violation of the rules. A person that willfully fails to comply with the rules is liable for damage caused by the failure and for the cost of restoring or replacing construction damaged. [IC 13-26-5-4]

RECORDS

IC 13-26-7-1 states: "Each district must keep proper records showing the district's finances." The district is encouraged to use the chart of accounts and accounting system prescribed by the State Board of Accounts for use by municipal utilities as outlined in Chapter 24 of this manual.

ISSUANCE OF BONDS

A district may obtain money for the payment of the costs of the works or an improvement, enlargement, or extension of the works by the issuance of revenue bonds of the district. The principal and interest of the revenue bonds must be paid solely from the net revenues of the works. [IC 13-26-10-1]

RATES AND CHARGES

A. WATERWORKS. The rates and charges for a waterworks may be determined based on the following:

(1) A flat charge for each connection.

(2) the amount of water consumed.

(3) The size of the meter or connection.

(4) Whether the property served has been or will be required to pay separately for the cost of any of the facilities of the works.

- (5) A combination of these or other factors that the board determines is necessary to establish just and equitable rates and charges. [IC 13-26-11-1]

B. SEWAGE WORKS. The rates or charges for a sewage works may be determined based on the following:

- (1) A flat charge for each connection.
- (2) The amount of water used on the premises.
- (3) The number and size of water outlets on the premises.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property served has been or will be required to pay separately for the cost of any of the facilities of the works.
- (7) A combination of these or other factors that the board determines is necessary to establish just and equitable rates or charges. [IC 13-26-11-2]

C. SOLID WASTE DISPOSAL AND RECOVERY SYSTEMS. The rates or charges for solid waste disposal and recovery systems may be determined based on the following:

- (1) A flat charge for each residence or building in use in the district.
- (2) On the weight of the refuse received.
- (3) On the hazardous character of the waste received.
- (4) On a combination of the weight and hazardous character of the waste received. [IC 13-26-11-3]

The rates and charges for services of a water, sewer, or solid waste disposal or recovery system do not have to be uniform throughout the district or for all users. The board may exercise reasonable discretion in:

- (1) adopting different schedules of rates and charges; or
- (2) making classifications in schedules of rates and charges:
 - (A) based upon variations in the costs of furnishing the services, including capital expenditures required, to various classes of users or to various locations in the district; or
 - (B) where there are variations in the number of users in various locations in the district. [IC 13-26-11-4]

If a district constructs sewers or water mains as a part of the construction of the works that are suitable for use as a local or lateral sewer or main by abutting or adjoining property, the district may charge for the connection on the basis of the pro rata cost of construction of a local or lateral sewer or water main sufficient to serve the property.

Each property owner must agree to pay for the connection in making an application for service. If payment is not made as agreed, the payment constitutes a lien on the property for which the connection is made.

The proceeds of the connection charges may be handled as:

- (1) net revenues of the works; or
- (2) payments toward the cost of construction or future improvements. [IC 13-26-11-7]

The board shall, by ordinance, establish just and equitable rates or charges for the use of and the service provided by a works. The rates or charges are payable by the owner of each lot, parcel of land, or building that:

- (1) is connected with and uses a works; or
- (2) in any way uses or is served by a works.

The board may periodically change and readjust the rates or charges. [IC 13-26-11-8]

Just and equitable rates and charges are those that produce sufficient revenue to:

- (1) pay all expenses incident to the operation of the works, including maintenance cost, operating charges, upkeep, repairs, and interest charges on bonds or other obligations;
- (2) provide the sinking fund for the liquidation of bonds or other evidence of indebtedness and reserves against default in the payment of interest and principal of bonds; and
- (3) provide adequate money to be used as working capital, as well as money for making improvements, additions, extensions, and replacements.

Rates and charges too low to meet the financial requirements described in IC 13-26-11-9 are unlawful. The initial rates and charges established after notice and hearing under this article are prima facie just and equitable. [IC 13-26-11-9]

Revenue collected under IC 13-26-11-8 through IC 13-26-11-14 is revenue of the works. [IC 13-26-11-10]

The initial rates or charges may be established only after a public hearing at which all:

- (1) the users of the works and owners of property served or to be served; and
- (2) others interested;

have an opportunity to be heard concerning the proposed rates or charges. [IC 13-26-11-11]

After introduction of the ordinance initially fixing rates or charges but before the ordinance is finally adopted, notice of the hearing setting forth the proposed schedule of the rates or charges must be given by publication one (1) time each week for two (2) weeks in a newspaper of general circulation in each of the counties with territory in the district. The last publication must be at least seven (7) days before the date fixed in the notice for the hearing. The hearing may be adjourned as necessary. [IC 13-26-11-12]

The ordinance establishing the initial rates or charges, either as:

- (1) originally introduced; or
- (2) modified and amended;

shall be passed and put into effect after the hearing.

A copy of the schedule of the rates and charges established must be:

- (1) kept on file in the office of the district; and
- (2) open to public inspection. [IC 13-26-11-13]

The rates or charges established for a class of users of property served shall be extended to cover any additional premises served after the rates or charges are established that are in the same class, without the necessity of hearing or notice.

A change or readjustment of the rates or charges may be made in the same manner as the rates or charges were originally established. [IC 13-26-11-14]

LIENS FOR RATES OR CHARGES

The rates made, assessed, or established against:

- (1) a lot;
- (2) a parcel of land; or
- (3) a building;

that is connected with and uses the works of the district are a lien against the lot, parcel of land, or building. [IC 13-26-12-1]

Except as provided in IC 13-26-12-5 and IC 13-26-12-6, a lien attaches at the time of the recording of the list in the county recorder's office as provided in IC 13-26-13. The lien:

- (1) is superior to and takes precedence over all other liens except the lien for taxes; and
- (2) shall be enforced under this article. [IC 13-26-12-2]

If rates or charges are not paid within the time fixed by the board, the rates or charges become delinquent and a penalty of ten percent (10%) of the amount of the rates or charges attaches to the rates or charges. The board may recover:

- (1) the amount due;
- (2) the penalty; and
- (3) a reasonable attorney's fee;

in a civil action in the name of the district. [IC 13-26-12-3]

A rate or charge is not enforceable as a lien against a subsequent owner of property unless the lien for the rate or charge was recorded with the county recorder before the conveyance to the subsequent owner.

If the property is conveyed before the lien can be filed, the officer of the district who is charged with the collection of the rate or charge shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not less than fifteen (15) days after the date of the notice. If payment is not received not later than one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss. [IC 13-26-12-5]

IC 13-26-12-6 applies whenever the owner of the property has notified the general office of the district by certified mail with return receipt requested of the address to which the owner's notice is to be sent.

A lien does not attach against a lot, parcel of land, or building occupied by someone other than the owner unless the officer of the district who is charged with the collection of rates or charges notifies the owner of the property after the rates or charges have become sixty (60) days delinquent. [IC 13-26-12-6]

The district shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser.

The demand must state the following:

- (1) That the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner.
- (2) That the purchaser has not been paid by the seller for the delinquent fees. [IC 13-26-12-7]

ENFORCEMENT OF DELINQUENCIES

IC 13-26-13 applies only to fees or penalties that have been due and unpaid for at least ninety (90) days.

The officer of the district who is charged with the collection of the rates or charges shall enforce payment of the rates or charges. The officer shall, not more than two (2) times in a year, prepare a list of the delinquent rates or charges, including the amount of the penalty, that are enforceable under this chapter. The list must include the following:

- (1) The name of each owner of each lot or parcel of real property on which the rates or charges have become delinquent.
- (2) The description of the premises as shown by the records of the office of the county auditor.
- (3) The amount of the rates or charges, together with the amount of the penalty. [IC 13-26-13-2]

The officer shall record a copy of the list in the office of the county recorder.

The county recorder shall charge a fee for recording the list in accordance with the fee schedule established in IC 36-2-7-10.

After recording the list, the officer shall mail to each property owner on the list a notice stating that a lien against the owner's property has been recorded.

In all counties except Marion County, a service charge of five dollars (\$5), which is in addition to the recording fee charged under IC 13-26-13-3 and IC 13-26-13-6, shall be added to each delinquent rate or charge that is recorded. [IC 13-26-13-3]

In all counties except Marion County, using the lists prepared and recorded under IC 13-26-13-2 and IC 13-26-13-3;

- (1) after April 1 of the preceding year; and
- (2) before April 1 of the current year;

the officer shall before June 1 of each year certify to the county auditor a list of the liens that remain unpaid for collection in the next November.

The county and the officers and employees of the county are not liable for any material error in the information on this list. [IC 13-26-13-5]

The officer shall release a recorded lien when the:

- (1) delinquent rates or charges;
- (2) penalties;
- (3) service charges; and
- (4) recording fees;

have been fully paid.

The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10. [IC 13-26-13-6]

In all counties except Marion County, on receipt of the list under IC 13-26-13-5, the county auditor shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which rates or charges are delinquent. The certification fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the municipality the:

- (1) delinquent rates or charges;
- (2) penalties;
- (3) service charges;
- (4) recording fees; and
- (5) certification fees;

that are due not later than the due date of the next November installment of property taxes.

In Marion County on receipt of the list under IC 13-26-13-4, the county auditor shall enter on the tax duplicate the:

- (1) delinquent fees;
- (2) penalties;
- (3) service charges; and
- (4) recording fees;

that are due not later than the due date of the next installment of property taxes.

The county treasurer shall include any unpaid charges for the:

- (1) delinquent rate or charge;
- (2) penalty;
- (3) service charge;
- (4) recording fee; and
- (5) certification fee;

to each owner of each lot or parcel of property at the time the next cycle's property tax installment is billed. [IC 13-26-13-7]

In all counties except Marion County, after June 1 of each year, the officer may not collect or accept:

- (1) delinquent rates or charges;
- (2) penalties;
- (3) service charges;
- (4) recording fees; or
- (5) certification fees;

from property owners whose property has been certified to the county auditor. [IC 13-26-13-8]

If a:

- (1) delinquent rate or charge;
- (2) penalty;
- (3) service charge;
- (4) recording fee; and
- (5) certification fee;

is not paid, the county treasurer shall collect the unpaid money in the same way that delinquent property taxes are collected. [IC 13-26-13-9]

A district may, as an additional or alternative remedy, foreclose a lien as a means of collection of rates or charges, including the penalty on the rates or charges. [IC 13-26-14-1]

In all actions brought to foreclose the liens, the district is entitled to recover the following:

- (1) The amount of the rates or charges.
- (2) The penalty on the rates or charges.
- (3) A reasonable attorney's fee.

The court shall order that the sale be made without relief from valuation or appraisal statutes. [IC 13-26-14-2]

Except as otherwise provided by IC 13-26, in all actions to foreclose the liens:

- (1) the laws concerning municipal public improvement assessments; and
- (2) the rights, remedies, procedure, and relief granted the parties to the action;

apply. [IC 13-26-14-3]